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IN THE COURT OF APPEAL

R.M. Civil Appeal No. 55/70

BEFORE: The Hon. Mr. Justice Luckhoo - presiding  
The Hon. Mr. Justice Edun  
The Hon. Mr. Justice Hercules

THE ADMINISTRATOR GENERAL

FOR JAMAICA

v.

CHARLES DIXON

Mr. Haughton Gayle for the plaintiff/appellant  
No appearance for defendant/respondent.

13th January, 1971.

LUCKHOO, J.A.:

The deceased Retinella Cummings died intestate on or about the 9th January, 1954. The defendant Charles Dixon entered into possession of the deceased's estate which included approximately one-quarter of an acre of land situate at No. 3 Brown's Terrace, May Pen in the parish of Clarendon, with certain buildings thereon. The defendant did not obtain letters of administration of the deceased's estate neither did she obtain an order of court which would entitle her to administer the deceased's estate. Subsequently the plaintiff, the Administrator General of Jamaica, entered upon the administration of the deceased's estate and brought a claim against the defendant claiming an amount in relation to defendant's administration of the deceased's estate over the period 1959 to 1967.

The learned resident magistrate for the parish of Clarendon on the 12th August, 1968 ordered that an account be taken by the clerk of the courts in relation to the rents

and profits of the deceased's estate received by the defendant and an inquiry as to what real estate the deceased was seized of or entitled to at the time of her death.

The clerk of courts duly made enquiry as ordered and furnished his certificate on the 28th August, 1969, showing that the deceased at the time of her death was seized of or entitled to approximately one quarter of an acre of land with certain buildings thereon at No. 3 Brown's Terrace in May Pen, all to the value of £900; that the defendant had received rents and profits off the deceased estate to the amount of £626.4.5d; that the defendant had paid certain amounts in relation to the deceased's property for taxes and water rates due from 1960 to 1967, and had spent £45 in making a kitchen and £7.10/- in dumping marl on the deceased's premises. The defendant had also paid £16.10/- as funeral expenses.

The clerk of the courts found that there was a balance due by the defendant to the plaintiff of £524.5.9d.

On the 13th November, 1969, the parties appeared before the learned resident magistrate and the plaintiff moved for confirmation of the clerk's report. Counsel for the defendant, Mr. Noel Edwards, then submitted that from the items filed at the enquiry by the clerk it was evident that the defendant had improved the deceased's estate by way of repairs to one of the buildings thereon, and further Mr. Edwards submitted that the defendant should be allowed reasonable compensation for his care and management of the estate notwithstanding his unlawful meddling therein.

Counsel for the Administrator General, Mr. Gayle, objected to the allowance of any compensation for care and management by the defendant on the ground that any such allowance would be tantamount to the defendant, an executor

de son tort, profiting from his own wrong.

The learned resident magistrate, however, decided that the defendant was entitled to compensation for care and management of the deceased's estate and allowed an amount in that regard which reduced the amount of £524.5.9d found by the clerk to be owing by the defendant to the plaintiff to the sum of £350 and entered judgment accordingly in this latter sum.

Before us, it has been submitted by Mr. Gayle that it was not competent for the learned resident magistrate to award compensation to the defendant in relation to care and management given by the defendant in the administration of the deceased's estate for the same reason as that advanced by him before the learned resident magistrate.

We should point out that on the record of appeal before us there is no indication that the learned resident magistrate made any notes in relation to the proceedings which took place before him on the 13th November, 1969. Be that as it may, it is apparent that the only point for our determination is whether it was competent for the learned resident magistrate to make an award to the defendant an executor de son tort in relation to the defendant's claim for compensation for looking after the deceased's estate. We know of no authority which would allow the learned resident magistrate to make any such award and none has been referred to by the learned magistrate in his memorandum of reasons for judgment. In the result, the order made by the learned resident magistrate is set aside and judgment entered for the plaintiff against the defendant in the sum of \$534.5.9d, equivalent to \$1,048.58, with costs of the appeal fixed at \$30. The appeal is allowed.

J. A. Luchins  
Att. Gen. JA.